

S.B. Civil Writ Petition No.7015/07
Mousar Cement Pvt. Ltd.
vs.
The State of Raj. & ors.

Date of order: 25.10.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr. Kailash Khatri for the petitioner.

Heard learned counsel for the petitioner.

It appears from the facts of the case that properties of Mousar Cement Private Limited, because of default in payment of loan amount, was auctioned by the Rajasthan Financial Corporation. According to the petitioner, the property of Mousar Cement Private Limited except one transformer was purchased by M/s Jai Vijay Industries, Jodhpur. The transformer of the said Company Mousar Cement Private Limited was purchased by non-petitioner no.3 Vinod Kumar. Vinod Kumar purchased the said transformer for a very low cost, therefore, an application was submitted before the District Collector for cancellation of the auction of the transformer, upon which the said auction was sought to be cancelled by the District Collector. Vinod Kumar, being aggrieved against the said decision of the District Collector, filed the suit for injunction. It appears that the subject matter of the

suit is only transformer and not the other property of the erstwhile Mousar Cement Private Limited. The petitioner M/s Jai Vijay Industries, Jodhpur, who has filed the writ petition in the name of Mousar Cement Private Limited, stated that the petitioner was ready to give adequate security for the transformer and, therefore, he moved application before the Tehsildar, Ratangarh for delivery of the said transformer to the petitioner on security but that application was rejected by the Tehsildar because of stay order passed by this Court wherein only further proceeding of suit filed by respondent Vinod Kumar was stayed.

It will be worthwhile to mention here that in the suit filed by Vinod Kumar in the civil court, the petitioner submitted an application under Order 1 Rule 10, C.P.C. which was dismissed by the trial court vide order dated 7.3.2007. Against this order, the petitioner preferred S.B.Civil Writ Petition NO.1841/2007 and in that writ petition, on 17.5.2007, proceedings in the civil suit no.14/2005 have been stayed.

The learned counsel for the petitioner submits that the petitioner is prepared to give adequate security, then there was no reason for the Tehsildar for not taking decision on petitioner's application only on the ground that the proceedings of the suit has

been stayed in S.B.Civil Writ Petition No.1841/07 and, therefore, the order of the Tehsildar deserves to be set aside.

I considered the submissions of the learned counsel for the petitioner and perused the documents placed on record.

When the litigation is pending with respect to the transformer in question itself in the civil court wherein the petitioner was not impleaded as party by the trial court and the writ petition to challenge the trial court's order has been preferred by the petitioner and this Court has stayed further proceedings in the civil suit, then how the petitioner could have obtained the relief from the Tehsildar with respect to the subject matter of the suit itself and that too during pendency of the civil suit, in which he yet has not become party.

In view of the above reason, I do not find any merit in the writ petition of the petitioner. Hence the writ petition is dismissed.

(PRAKASH TATIA),J.

mlt.